IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 25385 of 2007(S)

OA.336/2007 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
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PETITIONERS:
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1. THE COMMISSIONER OF CENTRAL EXCISE &
CUSTOMS, CENTRAL EXCISE BHAVAN,
PRESS CLUB ROAD - TRIVANDRUM.

2. THE COMMISSIONER OF CENTRAL EXCISE &
CUSTOMS, CENTRAL REVENUE BUILDINGS,
I.S.PRESS ROAD, COCHIN-18.

3. THE CHIEF COMMISSIONER OF CENTRAL EXCISE
CENTRAL REVENUE BUILDINGS,
I.S.PRESS ROAD, COCHIN-18.

4. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, DEPARTMENT OF REVENUE,
MINISTRY OF EXTERNAL AFFAIRS,
NORTH BLOCK, NEW DELHI.

BY ADV. SRI.P.PARAMESWARAN NAIR

RESPONDENTS:

K.SOMAN PILLAI,
SUPERINTENDENT OF CENTRAL EXCISE,
KAYAMKULAM II RANGE, KAYAMKULAM.

BY ADV. SRI.C.S.GOPALAKRISHNAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 25385/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER DT. 4/6/07 IN OA NO. 336/07 BY THE CAT, ERNAKULAM BENCH.

EXT.P2. COPY OF THE O.A. NO. 336/2007 CAT ERNAKULAM.

RESPONDENT'S EXHIBITS

EXT.R1. COPY OF THE TRANSFER ORDER NO. 28/07 DT. 3/7/07.

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.25385 of 2007-S

Judgment

Balakrishnan Nair, J.

The respondents in OA No.336/07 on the files of the Central Administrative Tribunal, Cochin Bench are the writ petitioners. The applicant therein is the respondent. The respondent filed Ext.P2 OA, challenging an order dated 04.05.2007 (Annexure A5 to the OA), whereby, he was transferred from Kayamkulam II Range to Neendakara Customs House. The respondent is settled at Mavelikkara. Owing to ill-health and arduous nature of the duty in the Customs House, he sought cancellation of that transfer. He placed reliance on Annexures A1 and A2 guidelines, which say, normally, the persons having service less than two years for retirement would be accommodated at their place of choice, subject, of course to administrative convenience. The respondent challenged the transfer order before the CAT, by filing Ext.P2 OA. At the time of hearing, the petitioners herein, who were the respondents in the OA, submitted that the applicant is presently working in a sensitive post and therefore, he has to be transferred on completion of three years' service to

some other post. The second post at Kayamkulam, where he can be accommodated, is presently occupied by an incumbent, who is posted there only in 2006 and therefore, the person cannot be disturbed and so, the applicant was transferred to Neendakara, it was submitted. The Tribunal said that if the said person is willing to be transferred to the place of the applicant, they can be mutually transferred. So, the competent authority was directed by the CAT to consider the same by Ext.P1 Judgment.

2. Pursuant to the said Judgment, the Commissioner of Central Excise passed Ext.R1 order dated 03.07.2007. From the said order, it is evident that the incumbent working in the Kayamkulam I Range has agreed to come over to Kayamkulam II Range, where the respondent is working and therefore, he has been accommodated in the place of the said person. The said development took place even before the filing of this Writ Petition on 16.08.2007. This Court admitted the Writ Petition and granted stay on 21.08.2007. It appears, on the strength of the said interim order, the respondent is, now, sought to be relieved. The writ petitioners attack Ext.P1 on the ground that the norms

governing transfer are only to act as guidelines. In exigencies of service, the applicant was transferred to Neendakara and therefore, there was no reason for the Tribunal to interfere with the same. So, they pray for quashing Ext.P1 order. The learned counsel for the respondent on the other hand, pointed out that the Tribunal went by the submissions made by the petitioners herein before it and therefore, they cannot be aggrieved by the order of the Tribunal, passed, based on their submissions.

3. We notice that only on two grounds, the respondent's transfer was justified. The first ground is that he cannot be retained in a sensitive post for more than three years. The second ground is that the other post available at Kayamkulam is occupied by an incumbent, who is posted there only in 2006. In the above background, the Tribunal directed to accommodate the respondent in that post, provided the incumbent working there is willing to come over to the place of the respondent. The Tribunal only said to consider the matter, based on the willingness of the incumbent working at Kayamkulam in which the respondent could be accommodated. Based on the above

direction of the Tribunal, the matter was considered and the respondent was posted at Kayamkulam Range I. Thereafter, he was working in Kayamkulam Range I and therefore, in view of the submissions made by the writ petitioners before the CAT, there is no reason to challenge that order and insist that the petitioner should be sent to Neendakara. Therefore, we find no merit in the Writ Petition. Accordingly, it is dismissed. The respondent shall be retained at Kayamkulam Central Excise Range I, till he retires in May 2008, unless there are other compelling administrative reasons to transfer him.

K.BALAKRISHNAN NAIR,JUDGE

18.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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